

## **REMARKS**

### **Status of the Claims**

Prior to entry of this paper, Claims 1-30 were pending. Claims 1-30 were rejected. In this paper no claims are amended, canceled, or added. After entry of this amendment, Claims 1-30 will be pending. For at least the following reasons, it is respectfully submitted that each of the presently pending claims is in condition for allowance.

### **Claim Rejections – 35 U.S.C. § 101**

Claims 18 and 19 were rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter that is non-functional descriptive material. Applicants' representative respectfully disagrees, and instead submits that Claim 17, from which Claims 18 and 19 depend and which first recites 'advertiser data', recites that 'advertiser data' is "employed to acquire placement of the advertiser data in the result from the sponsored search". Thus, advertiser data, including the particular types of advertiser data recited in Claims 18 and 19 are functional, as they are employed to acquire placement in the result from the sponsored search. Accordingly, Applicants' representative respectfully requests the rejection of Claims 18 and 19 under 35 USC § 101 be withdrawn.

### **Claim Rejections – 35 U.S.C. § 103**

Claims 1-9, 11-18, 20-28, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh et al., U.S. Patent No. 7,231,358 (hereafter "Singh") in view of Davis et al., U.S. Patent No. 6,269,361 (hereafter "Davis"), and further in view of Internet Archives Way Back Machine printout of the [www.GoToast.com/pdf/GTpapershoes.asp](http://www.GoToast.com/pdf/GTpapershoes.asp) website from August 16, 2003 (hereafter "Go Toast").

Claims 10 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh in view of Davis, further in view of Go Toast, and further in view of McGregor, U.S. Publication No. 2002/0026360 (hereafter "McGregor").

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh in view of Davis, further in view of Go Toast, and further in view of Mason et al., U.S. Patent No. 6,401,075 (hereafter “Mason”).

Claim 1 recites, in part (emphasis added):

*wherein the at least one predetermined method **divides the budget into a plurality of sub-budgets for corresponding time intervals** across the provided time interval, and the at least one predetermined method optimizes a plurality of separate bids for each sub-budget and corresponding time interval*

Applicants’ representative agrees with the Examiner that Singh fails to teach or suggest this limitation. However, Applicants’ representative respectfully submits that Go Toast also fails to teach or suggest dividing a budget into a plurality of sub-budgets for corresponding time intervals. Instead, Go Toast merely discusses raising or lowering bids based on parameters, such as time of day.<sup>1</sup> For example, Go Toast discusses “adjusting bids during less profitable hours, dramatically reducing expenses and increasing ROI”. Go Toast fails to explicitly discuss a budget, and so Go Toast clearly fails to explicitly teach or suggest dividing a budget into a plurality of sub-budgets for corresponding time intervals.

Moreover, Go Toast also fails to inherently teach or suggest dividing a budget into a plurality of sub-budgets for corresponding time intervals. The MPEP states that a rejection based on inherency requires that any allegedly inherent characteristic necessarily flows from the teachings of the applied prior art (emphasis in the original).<sup>2</sup> However, Go Toast’s bid adjustments based on time of day do not necessitate dividing a budget into a plurality of sub-budgets for corresponding time intervals. For example, Go Toast may adjust bids strictly based on ROI statistics, without regard to a budget. Moreover, even if Go Toast did hypothetically inherently discuss a budget, which it does not, it is still not necessarily the case that such a hypothetical budget would be broken down into a budget for profitable and less profitable hours. Therefore, even the combination of Singh, Davis, and Go Toast fails to teach or suggest

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<sup>1</sup> See GoToast page 1.

<sup>2</sup> See MPEP 2112(IV).

“wherein the at least one predetermined method divides the budget into a plurality of sub-budgets for corresponding time intervals across the provided time interval, and the at least one predetermined method optimizes a plurality of separate bids for each sub-budget and corresponding time interval” as recited in Claim 1.

Independent **Claims 13, 17, 23, and 30** include limitations similar to, albeit different from, those discussed herein with respect to independent Claim 1. For at least similar reasons, the combination of Singh in view of Davis and Go Toast does not suggest the limitations of these claims either. Accordingly, it is respectfully submitted that these claims are patentable over Singh in view of Davis and Go Toast, and withdrawal of the rejections to Claims 1, 13, 17, 23, and 30 under 35 U.S.C. § 103(a) is respectfully requested.

Dependent **Claims 2-12, 14-16, 18-22, and 24-29** respectively depended from independent base Claims 1, 13, 17, and 23. Thus, these dependent claims are not suggested by any combination of Singh in view of Davis, Go Toast, Mason, or McGregor for at least similar reasons. Accordingly, withdrawal of the rejections to 2-12, 14-16, 18-22, and 24-29 under 35 U.S.C. § 103(a) is respectfully requested.

### **CONCLUSION**

It is respectfully submitted that each of the presently pending claims (Claims 1-30) are now in condition for allowance and notification to that effect is requested. Examiner is invited to contact the Applicants' representative at the below-listed telephone number if it is believed that the prosecution of this application may be assisted thereby. Although only certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentable. Applicants reserve the right to raise these arguments in the future.

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